

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1126 be amended to read as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 4-15-2-35 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 35. (a) Any regular
- 4 employee may file a complaint if his status of employment is
- 5 involuntarily changed or if he deems conditions of employment to be
- 6 unsatisfactory. However, the complaint procedure shall be initiated as
- 7 soon as possible after the occurrence of the act or condition complained
- 8 of and in no event shall be initiated more than thirty (30) calendar days
- 9 after the employee is notified of a change in his status of employment
- 10 or after an unsatisfactory condition of employment is created. Failure
- 11 to initiate the complaint procedure within such time period shall render
- 12 the complaint procedure unavailable to the employee. The following
- 13 complaint procedure shall be followed:
- 14 Step I: The complaint procedure shall be initiated by a discussion
- 15 of the complaint by the employee and his immediate supervisor
- 16 and, if a mutually satisfactory settlement has not been made
- 17 within two (2) consecutive working days, such complaint may be
- 18 referred to Step II.
- 19 Step II: The complaint shall be reduced to writing and presented
- 20 to the intermediate supervisor. If a mutually satisfactory
- 21 settlement has not been reached within four (4) consecutive
- 22 working days, such complaint may then be referred to the
- 23 Appointing Authority.
- 24 Step III: The Appointing Authority or his designated

representative shall hold such hearings and conduct such investigations as he deems necessary to render a decision and shall make such decision in writing within ten (10) consecutive working days.

**Step IV:** Should the appointing authority or his designated representative not find in favor of the employee, the complaint may be submitted within fifteen (15) calendar days to the state personnel director. The director or his designee shall review the complaint and render a decision within fifteen (15) calendar days. If the decision is not agreeable to the employee, an appeal may be submitted by the employee in writing to **either the commission or arbitration** no later than fifteen (15) calendar days from the date the employee has been given notice of the action taken by the personnel director or his designee.

~~After submission of the appeal;~~ **Step V: (A) If an employee elects to submit the appeal to the commission,** the commission shall, prior to rendering its decision, grant the appealing employee and the appointing authority a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the employee was taken on the basis of politics, religion, sex, age, race or because of membership in an employee organization, the employee shall be reinstated to his position without loss of pay. In all other cases, **unless judicial review of the decision is requested in accordance with IC 4-21.5-5,** the appointing authority shall follow the ~~recommendation decision~~ of the commission which may include reinstatement and payment of salary or wages lost by the employee which may be mitigated by any wages the employee earned from other employment during a dismissed or suspended period.

If the recommendation of the commission is not agreeable to the employee, ~~the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration.~~ The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations; and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

**Step V: (B) If an employee elects to submit the appeal to arbitration, an arbitrator must be selected from:**

- (i) the American Arbitration Association; or
- (ii) the Federal Mediation and Conciliation Service, if an arbitrator is not available from the American Arbitration Association;

according to selection procedures established by the arbitrator's association or service. The costs of arbitration under this Step shall be shared equally by the employer and the employee or the employee's representative.

Step VI: The decision of the commission under Step V(A) or the arbitrator under Step V(B) is a final order subject to judicial review in accordance with IC 4-21.5-5. The commission's or arbitrator's decision in Step V is binding unless a party requests judicial review.

(b) An employee who files a complaint under subsection (a) may choose a representative who is inside or outside of the employee's agency or facility to represent the employee during Steps III through VI of the complaint procedure.

(c) If the employer does not comply with the timelines set forth in subsection (a), the employee's complaint proceeds to the next Step of the complaint procedure.

(d) Subsections (e) through (k) apply to an individual who is employed as a teacher in a state institution under:

- (1) IC 11-10-5;
- (2) IC 12-24-3;
- (3) IC 16-33-3;
- (4) IC 16-33-4;
- (5) IC 20-15; or
- (6) IC 20-16.

(e) Instead of the grievance procedure described in subsections (a) through (c), the grievance procedure established by subsections (f) through (k) applies to a teacher who is described in subsection (d).

(f) If a teacher wishes to file a grievance concerning an action taken by the teacher's employer, the grievance must be filed according to the following procedure:

- (1) The teacher may file a grievance with the teacher's immediate supervisor not more than thirty (30) working days after the action taken by the employer occurs.
- (2) The immediate supervisor shall respond to a grievance filed under subdivision (1) not more than two (2) working days after the immediate supervisor receives the grievance.
- (3) If the teacher is dissatisfied with the response under subdivision (2), the teacher may file a written grievance with the teacher's intermediate supervisor.
- (4) The intermediate supervisor shall respond to a written grievance filed under subdivision (3) not more than four (4) working days after the intermediate supervisor receives the

1 written grievance.

2 (5) If the teacher is dissatisfied with the response under  
3 subdivision (4), the teacher may file a written grievance with  
4 the superintendent of the institution in which the teacher is  
5 employed.

6 (6) The superintendent shall respond to a written grievance  
7 filed under subdivision (5) not more than ten (10) working  
8 days after the superintendent receives the written grievance.

9 (7) If the teacher is dissatisfied with the response under  
10 subdivision (6), the teacher may file a written grievance with  
11 the state personnel director appointed under IC 4-15-1.8-3 not  
12 more than fifteen (15) working days after the teacher receives  
13 the response under subdivision (6).

14 (8) The state personnel director shall respond to a written  
15 grievance filed under subdivision (7) not more than fifteen  
16 (15) working days after the state personnel director receives  
17 the written grievance.

18 (9) If the teacher is dissatisfied with the response under  
19 subdivision (8), the teacher may file a written grievance with  
20 the state employees' appeals commission under 33 IAC 1 not  
21 more than fifteen (15) working days after the teacher receives  
22 the response under subdivision (8). In the alternative, the  
23 teacher may submit the grievance directly to arbitration as  
24 described in subdivision (11).

25 (10) The state employees' appeals commission shall set a  
26 hearing date on the written grievance filed under subdivision  
27 (9) not more than thirty (30) working days after the state  
28 employees' appeals commission receives the written grievance  
29 and shall render a decision not more than thirty (30) working  
30 days after the date of the hearing unless this period is  
31 extended by the written consent of all parties.

32 (11) If the teacher is dissatisfied with the response under  
33 subdivision (10), the teacher may submit the grievance to  
34 arbitration not more than fifteen (15) working days after the  
35 teacher receives the response under subdivision (10).

36 (12) The arbitrator to whom the grievance is submitted under  
37 subdivision (9) or (11) shall hold a hearing and shall render a  
38 decision not more than thirty (30) working days after the  
39 hearing.

40 (g) An arbitrator to whom a grievance is submitted under  
41 subsection (f)(9) or (f)(11) must be selected from:

42 (1) the American Arbitration Association; or

43 (2) the Federal Mediation and Conciliation Service, if an  
44 arbitrator is not available from the American Arbitration  
45 Association;

46 according to selection procedures established by the arbitrator's  
47 association or service.

1       **(h) Costs of arbitration under subsections (f) through (k) shall**  
 2 **be shared equally by the employer and the teacher or the teacher's**  
 3 **organization.**

4       **(i) If the employer does not comply with the timelines set forth**  
 5 **in subsection (f), the grievance proceeds to the next step of the**  
 6 **procedure.**

7       **(j) A teacher who files a grievance under subsections (f) through**  
 8 **(k) may choose a representative from inside or outside the**  
 9 **institution to represent the teacher in subdivisions (f)(5) through**  
 10 **(f)(12) of the grievance procedure under subsections (f) through**  
 11 **(k).**

12       **(k) The decision of the arbitrator is a final order subject to**  
 13 **judicial review in accordance with IC 4-21.5-5."**

14       Delete pages 2 through 4.

15       Page 5, delete lines 1 through 4.

16       Page 6, line 3, after "seq.;" insert "**and**".

17       Page 6, line 4, after "completed" insert ":

18               **(A) before January 1, 2004,".**

19       Page 6, line 4, after "years" insert "; **or**

20               **(B) after December 31, 2003, fifteen (15) years;".**

21       Page 6, line 4, left beginning with "of" begin a new line block  
 22 indented.

23       Page 6, line 7, delete ";" and insert ".".

24       Page 6, line 7, strike "and".

25       Page 6, strike lines 8 through 10.

26       Renumber all SECTIONS consecutively.

(Reference is to HB 1126 as printed February 28, 2003.)

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Representative Pelath